

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 7,364,744)	
)	Group Art Unit: 1648
Inventor: HOVANESESIAN et al.)	
)	Examiner: Agnieszka Boesen
Issued: April 29, 2008)	
)	
For: NOVEL SYNTHETIC PEPTIDE VACCINES)	
FOR HIV: THE CBD EPITOPE AS AN)	
EFFECTIVE IMMUNOGEN TO ELICIT)	Confirmation No.: 9491
BROADLY NEUTRALIZING ANTIBODIES)	
AGAINST HIV)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (PTO) issued the above-referenced U.S. Patent No. 7,364,744 (the '744 patent) on April 29, 2008, with a patent term adjustment (PTA) of 72 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the PTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time periods of PTA

accrue due to PTO examination delay and those time periods do not overlap. The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.


Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 24, 2008

By: 
Kenneth J. Meyers
Reg. No. 25,146

Enclosures

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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The Office issued the subject U.S. Patent No. 7,364,744 (the '744 patent) with a patent term adjustment of 72 days.

The Application was filed on April 9, 2004. The first Office Action on the merits was dated May 1, 2006, creating a U.S. Patent and Trademark Office (PTO) delay of 327 days. A response to the May 1, 2006, Office Action was filed May 18, 2006. The second Office Action on the merits was dated July 24, 2006. A response to the July 24, 2006, Office Action was filed on February 1, 2007, creating an Applicant delay of 92 days. A Final Office Action was dated April 30, 2007. A response to the April 30, 2007, Final Office Action and Notice of Appeal were filed on October 29, 2007, creating an Applicant delay of 89 days. The patent application was allowed on December 11, 2007, and

the issue fee was paid on March 11, 2008. The '744 patent issued on April 29, 2008. The three year pendency date for determination of patent term adjustment is April 9, 2007, thereby creating a PTO delay of 386 days.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 399 days which is the sum of 327 days of patent term adjustment due to exceeding three year pendency and 72 days due to PTO delay in prosecution.


If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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